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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

VAN DER HOUT L.L.P.,  
  
Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY; U.S. DEPARTMENT OF  
STATE,

Defendants.

No. 3:24-cv-01095

**PLAINTIFF’S OPPOSED MOTION FOR  
LEAVE TO FILE ONE-PAGE SUR-  
REPLY**

1 *[Caption Page Continued – Additional Attorneys for Plaintiff Van Der Hout L.L.P.]*

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Pursuant to Civil Local Rules 7-3(d) and 7-11, Plaintiff respectfully moves the Court for leave to file a one-page sur-reply to Defendants' Reply in Support of Cross-Motion for Summary Judgment, ECF No. 45 ("Def'ts' Reply" or "Reply"). Defendants oppose this motion. *See* Decl. of Johnny Sinodis (attached hereto).

Plaintiff is filing this motion because, in their Reply, Defendants raised an entirely new argument, asserting that Plaintiff is seeking to amend its complaint by implication under Fed. R. Civ. P. 15(b)(2). *See* Def'ts' Reply at 2–5. A sur-reply is appropriate where the defendants have raised a new argument or evidence in a reply brief and the plaintiff requires an opportunity to respond. *See, e.g., In re Cloudera, Inc.*, No. 19-CV-03221-LHK, 2021 WL 2115303, at \*8 (N.D. Cal. 2021) (citing *El Pollo Loco v. Hashim*, 316 F.3d 1032, 1040–1041 (9th Cir. 2003) (permitting plaintiff to file a sur-reply to address new legal arguments raised in reply)). *See also Kiewit Power Constructors Co. v. Sec'y of Labor*, 959 F.3d 381, 393 (D.C. Cir. 2020) (stating the "purpose of a sur-reply brief is to allow a party to respond to arguments raised for the first time in a reply brief"). Courts routinely permit sur-replies to enable parties to address new arguments raised in a reply. *See, e.g., Gold v. Lumber Liquidators Inc.*, No. 14-CV-05373-TEH, 2017 WL 2688077, at \*2 (N.D. Cal. 2017); *Iglesia Cristiana Luz y Verdad v. Church Mut. Ins. Co.*, No. 15-CV-05621-RMW, 2016 WL 692839, at \*2 n.2 (N.D. Cal. 2016). Even when an argument within a reply is not new, courts have permitted a sur-reply where its consideration would not prejudice other parties and would "allow the Court to thoroughly consider the parties' arguments." *Leuzinger v. Cnty. of Lake*, 253 F.R.D. 469, 477 (N.D. Cal. 2008). To ensure fair adjudication of the issues in this case, Plaintiff asks the Court for leave to address Defendants' new argument through the accompanying one-page sur-reply. A supporting declaration and proposed order also accompany this motion.

Dated: December 12, 2024

Respectfully submitted,

/s/ Golnaz Fakhimi

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